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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of:

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/171067

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 17, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau ["DDB"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone from Madison, Wisconsin on March 29, 2016. At petitioner's request Hearings scheduled for March 1, 2016 and February 2, 2016 were rescheduled.

At the time of the March 29, 2016 Hearing in this matter petitioner withdrew her application for the Katie Beckett Program ["KBP"]. She is not withdrawing her application for MA based on disability.

The issue for determination is whether petitioner is disabled for purposes of MA.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

[REDACTED] (not present at March  
29, 2016 Hearing)  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

**Represented by:**

[REDACTED], petitioner's mother  
[REDACTED]  
[REDACTED]

**Respondent:**

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
BY: No Appearance

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (11 years old) is a resident of Door County, Wisconsin.
2. On June 12, 2015 petitioner filed a *Medicaid -- Disability Application*; by a letter dated November 9, 2015 DDB found that petitioner was not disabled because “her condition does not cause marked and severe functional limitations.”
3. On November 17, 2015 petitioner filed a *Medicaid -- Reconsideration Request -- Child* with DDB but DDB again determined that petitioner's condition is not disabling.
4. Petitioner has been diagnosed with Ehler Danlos Syndrome (an inherited disorder that affects connective tissues -- primarily skin, joints, and blood vessel walls; those with this syndrome usually have overly flexible joints and stretchy, fragile skin), anxiety, Attention Deficit Hyperactivity Disorder [ADHD], and depression; she has a cecostomy and suffers from chronic constipation; she sleeps a lot (12 or more hours per day), takes multiple medications, and experiences frequent pain and extreme fatigue (particularly after her cecostomy is flushed).
5. Petitioner is in 5<sup>th</sup> grade at public school and, due to pain and extreme fatigue, attends school for only about 5 hour per week; she is not allowed to run when in gym class; she does not have any cognitive deficits (although her mother reports that she is in a special education program and has a tutor for English and math); she sees friends for playdates but this exhausts her; she has no behavior or socialization issues (although she is sometimes picked-on by other children while at school); she is not employed.

### **DISCUSSION**

For purpose of MA a child is determined to be disabled by standards outlined in the Social Security Act. Wis. Stat. § 49.47(4)(a)4. (2013-14); Wis. Admin. Code §§ DHS 103.03(1)(c)2. & (d)3. (July 2015); See also, 42 C.F.R. § 435.540(a); Wis. Stat. § 49.46(1)(d)4 (2013-14); *Medicaid Eligibility Handbook* 5.2, 5.3 & 5.4. The applicable Social Security Act disability standards are found in the Code of Federal Regulations [“CFR”], Title 20, Part 416, Subpart I (§§ 416.901 et. seq.), and, by reference, Appendices 1 and 2, Subpart P, Part 404.

Under the Social Security Act, for a child to be *disabled* the child must have a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations. 20 C.F.R. § 416.906. Unless the impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. This is called the *duration requirement*. Id. & 20 C.F.R. § 416.909. If a child files a new application and the child is engaged in Substantial Gainful Activity, the child will not be considered *disabled* even if the child otherwise meets the definition of *disabled*. 20 C.F.R. § 416.906. A *Substantial Gainful Activity* [“SGA”] means work that: (a) involves doing significant and productive physical or mental duties; and, (b) is done (or intended) for pay or profit. 20 C.F.R. §§ 416.910 & 416.972.

DDB determined that petitioner is not disabled because it found that although petitioner has one or more severe physical or mental impairments her condition does not cause marked and severe functional limitations. The phrase *marked and severe functional limitations* is a level of severity that meets, or

medically or functionally equals, the severity of a listing in the Listing of Impairments found in Appendix 1 of Subpart P of Part 404 of Title 20 of the C.F.R. See, 20 C.F.R. § 416.902. This *Listing of Impairments* is known simply as *the Listing*. A child's impairment may be a *severe impairment* and yet not meet, or medically or functionally equal, the severity of a listing in the Listing. This is because not all *severe impairments* cause *marked and severe functional limitations*. See, 20 C.F.R. §§ 416.902 & 416.924(c) & (d).

A child has *marked and severe functional limitations* in any one of the following 3 circumstances: (1) the child's severe impairment meets the severity of a listing found in the Listing; (2) the child's severe impairment medically equals the severity of a listing found in the Listing; or, (3) the child's severe impairment functionally equals the severity of a listing found in the Listing. *Id.*; See also, 20 C.F.R. §§ 416.926 & 416.926a. Therefore, if a child's severe impairment meets at least 1 of these 3 tests and also meets the duration requirement, he or she will be found to be *disabled*. 20 C.F.R. § 416.924(d)(1). On the other hand, if a child's severe impairment does not meet any of these 3 tests, or does not meet the duration requirement, he or she will be found to be *not disabled*. 20 C.F.R. § 416.924(d)(2).

This matter must be decided based on a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (February 2013). As with any eligibility denial, the burden is on petitioner to show that she is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976).

First, it cannot conclude that petitioner's impairment currently equals the severity of a listing found in the Listing. The Listings that are most relevant to petitioner are found in 101.00 ("Musculoskeletal System") and 105.00 ("Digestive System"). However, petitioner does not exhibit all the necessary symptoms to the necessary degree to meet those Listings. Her impairments do not rise to the required level.

Second, based on the evidence, petitioner's impairments do not currently medically equal the severity of a listing found in the Listing. Petitioner's impairments are not at least equal in severity and duration to the listed findings found in the Listing. See, 20 C.F.R. § 416.926.

Third, as noted above, a child has *marked and severe functional limitations* if the child's severe impairment functionally equals the severity of a listing found in the Listing. In order for a severe impairment to functionally equal the severity of a listing found in the Listing it must be *of listing level severity*. A severe impairment is *of listing-level severity* if there are *marked*<sup>1</sup> limitations in any 2 of the following 6 *domains* (or an *extreme*<sup>2</sup> limitation in any 1 of the domains): (1) acquiring and using information; (2) attending and

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<sup>1</sup> A *marked* limitation will be found when the child's impairment interferes seriously with the child's ability to independently initiate, sustain, or complete activities. The child's day-to-day functioning may be seriously limited when the child's impairments limit only 1 activity or when the interactive and cumulative effects of the impairment limit several activities. *Marked* limitation also means a limitation that is *more than moderate* but *less than extreme*. It is the equivalent of the functioning one would expect to find on standardized testing with scores that are at least 2, but less than 3, standard deviations below the mean. 20 C.F.R. § 416.926a(e)(2)(i).

<sup>2</sup> An *extreme* limitation will be found when the child's impairment interferes very seriously with the child's ability to independently initiate, sustain, or complete activities. The child's day-to-day functioning may be very seriously limited when the child's impairments limit only 1 activity or when the interactive and cumulative effects of the impairment limit several activities. *Extreme* limitation also means a limitation that is *more than marked*. It is the rating given to the worst limitations. However, it does not necessarily mean a total lack or loss of ability to function. It

completing tasks; (3) interacting and relating with others; (4) moving about and manipulating objects; (5) caring for oneself; and, (6) health and physical well-being. 20 C.F.R. §§ 416.926a(b)(1) & (d); see also, 20 C.F.R. § 416.926a(e)(2)(i) & (3)(i).

DDB found that petitioner has a marked impairment in the domain (6) which is health and physical well-being. The finding of a marked limitation in that domain is appropriate due to petitioner's frequent pain, extreme fatigue, her cecostomy, and chronic constipation. Therefore, petitioner's condition will functionally equal the severity of a listing found if she has a marked impairment in at least one other domain (or an extreme impairment in any one of the domains).

As to domain 1 -- acquiring and using information: petitioner does not have any cognitive deficits; she does not have an impairment in this domain. See, 20 C.F.R. § 416.926a(g).

As to domain 2 -- attending and completing tasks: the evidence is that petitioner does not have a marked impairment in this domain (although due to fatigue, it may be more difficult or time-consuming for her to complete certain tasks than it is for others). See, 20 C.F.R. § 416.926a(h).

As to domain 3 -- interacting and relating with others: the evidence is that petitioner does not have a marked impairment in this domain. Petitioner sees friends for playdates (although this exhausts her) and she has no behavior or socialization issues (although she is sometimes picked-on by other children while at school). See, 20 C.F.R. § 416.926a(i).

As to domain 4 -- moving about and manipulating objects: the evidence is that petitioner does not have a marked impairment in this domain. See, 20 C.F.R. § 416.926a(j).

Finally, as to domain 5 -- caring for oneself: the evidence is that petitioner does not have a marked impairment in this domain (although due to fatigue, it may be more difficult or time-consuming for her to complete certain tasks, like dressing and bathing, than it is for others). See, 20 C.F.R. § 416.926a(k).

Based on the evidence in the record of this matter, petitioner does not currently have a marked impairment in any domain except for domain (6). Additionally, she does not have an extreme impairment in any one of the domains. Therefore, it must be concluded that she is not disabled.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, petitioner is not *disabled* for purposes of MA.

**NOW, THEREFORE**, it is

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is the equivalent of the functioning one would expect to find on standardized testing with scores that are at least 3 standard deviations below the mean. 20 C.F.R. § 416.926a(e)(3)(i).

**ORDERED**

That the petition for review herein be and the same is hereby DISMISSED.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

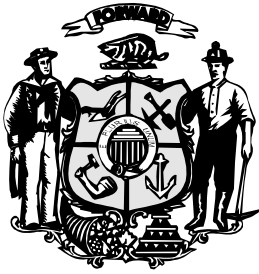
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 18th day of April, 2016

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\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 18, 2016.

Door County Department of Social Services  
Disability Determination Bureau